IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 34845 of 2007(W)

AGAINST THE ORDER IN EP. 121 /2001 IN OS.59/1998 of MUNSIFF COURT, TIRUR

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PETITIONER: JUDGEMENT DEBTOR

ALIKUTTY,
S/O KAKKANTEPURAKKAL AHAMEDKUTTY,
NIRAMARUTHUR AMSOM DESOM, TIRUR.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS: DECREE HOLDER

PONNAMKADAVATHU KUNHIMON,
S/O KUNHUMUHAMMED, MANGALAM AMSOM,
KOOTTAYIL DESOM, TIRUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C)NO.34845 of 2007 - W

Dated this the 28th day of November, 2007.

JUDGMENT

This writ petition is preferred against the order of the Munsiff, Tirur in E.P.No.121/2001 in O.S.No.59/1998. The court below found that the writ petitioner has got the means to pay and he is refusing to pay the amount. Therefore, ordered arrest. It is against that decision, the present writ petition is preferred. On an earlier occasion, the very same writ petitioner moved this Court C.R.P.No.1909/2003 and this Court granted him an opportunity to adduce evidence. After the said order, the present writ petitioner adduced evidence, but the court found that he has got the means to pay. One cannot find fault with the order in arriving at a conclusion regarding means in the light of the decision reported in **Kuppuswamy v. P.G.Menon** (1992 (2) KLT 203). This Court held that where it is proved or admitted or otherwise evident that judgment debtor owns or possess a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sale or mortgage or creating other encumbrance of the house. In such circumstances, it is open to the judgment debtor to

rebut the presumption and prove that he does not own or posses the house or that no alienation or encumbrance is possible of that property. Here a document has been produced which will show that his mother had properties. His mother is no more. There are only three legal heirs. Therefore, there is interest for the writ petitioner over the property. He has not rebutted the presumption as laid down in the decision referred to above and, therefore, one cannot find fault with the court for finding that he has got the means to pay. Therefore, I confirm the finding regarding means of the judgment debtor.

2. The learned counsel would submit that a breathing time should be given to him to wipe off the liability. I feel that some instalment facility can be given. Therefore, the writ petition is disposed of as follows:

(i) The finding on the means is confirmed.

(ii) The writ petitioner is directed to pay the amount in six monthly equal instalments and the 1st instalment is to commence from 2.1.2008. If there is default of the initial payment or payment of two consecutive instalments, then he will lose the benefit conferred on him and the decree holder will be entitled to proceed

against him by requesting the court to send him to civil prison. It is made clear that till that time, he shall not be arrested and detained in civil prison.

Disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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